

REMARKS

In the outstanding Office Action, the Examiner has rejected claims 1-11 on prior art grounds. Applicants respectfully request reconsideration and allowance of the claims 1-11, as well as new claims 12-15, in view of the present amendments and the following comments.

Claims 1-11 stand rejected under 35 U.S.C. 102(e) as being anticipated by Takagi et al. Applicants traverse this rejection based on the following comments.

Applicants respectfully submit that Takagi et al. do not disclose or suggest the claimed invention and that the Examiner has taken a broad interpretation of the term “enclosing” and in particular, the Examiner identifies and equates the term “enclosing” with the engagement of the window 14 and the actuator 17 (Fig. 12) in the cited reference. However, for purpose of further clarification of the present invention, Applicants have amended claim 1 to describe the type of interaction between the inner needle retraction actuating portion and the actuator housing.

More specifically, claim 1 has been amended to describe how the actuator housing prevents the inner needle retraction actuating portion from coming into contact with a hand. Claim 1, as amended, recites that the actuator portion housing encloses the inner needle retraction actuating portion when the inner needle retraction actuating portion biasedly retracts within and underneath a protective cover portion of the actuating portion housing to prevent both ends of the actuator from being freely accessible resulting in the actuating portion from coming into contact with a hand. Even if one broadly reads, as the Examiner has done, the locking slot (window) of the reference as functioning to “enclose” the inner needle retraction actuating portion within an actuating portion housing by receiving the actuator within a locking slot (window), whereby the ends of the locking slot are obstructed by edges (“enclosed”) that define the locking slot, the reference simply fails to show any housing that receives the actuator portion in a manner in which the actuator portion retracts within and under a protective cover portion of the housing. In fact, the reference completely lacks a protective cover portion a fact of which the Examiner has ignored in the discussion of the dependent claims which fails to set forth how the reference has a cover portion.

By retracting in the manner set forth in amended claim 1, the actuator portion can not be manipulated by a hand since it is covered by a structure that interferes with such hand contact. These features are clearly not shown in the cited reference.

In sum, the cited reference fails to teach the type of enclosure structure recited in the claim and the type of retraction set forth in the amended claim. Furthermore, claim 1 has been amended to clarify the position of the inner needle retraction actuating portion which will be enclosed by the actuating portion housing by addition of the following language to the claim: "the inner needle retraction actuating portion is positioned at an outside of the holder sleeve through the slit when the inner and outer needles are readied for puncture". Applicants respectfully submit that this feature is also neither disclosed nor suggested by the cited reference.

For at least these reasons, Applicants respectfully submit that the rejection of claim 1 can not be maintained since one or more features in amended claim 1 are not disclosed in the cited reference nor are they even suggested by the cited reference.

Claims 2-6 should be allowed as depending from what should be an allowed independent claim 1, as amended.

Independent claim 7 has been amended in the same manner in which claim 1 has been amended and therefore, Applicants respectfully submit that claim 7, as amended, should be allowed for the same reasons discussed above as to why claim 1 should be allowed.

Claims 8-11 should be allowed as depending from what should be an allowed independent claim 7.

Claims 12-15 have been added by way of this Amendment. Claims 12-14 should be allowed not only as depending from claim 1 but these claims also contain patentable subject matter in and of themselves. For example, claim 12 recites that the length of the cover portion is greater than the length of the inner needle retraction actuating portion, whereby the free end of the cover portion extends beyond the inner needle retraction actuating portion. Claim 13 further adds that

lateral access to the inner needle retraction actuating portion is restricted by the construction of the housing. This feature is not disclosed in the reference since lateral access to the actuator in the locking slot is not obstructed by any housing structure. Claim 15 contains similar limitations and should likewise be allowed.

Claims 1-11 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. patent No. 6,616,631. Applicants respectfully traverse this rejection on the grounds that the amended claims are not obvious in view of the claims of the cited patent. As the Examiner is aware of, in advancing a double patenting rejection of this type, only the claims of the cited reference can be used and compared to the present claims. Applicants submit that the actuator portion housing set forth in the presently amended claims is clearly neither disclosed nor suggested by the claims of the '631 patent. More specifically, the claims of the '631 patent are silent as to the construction of the actuator portion housing and in particular, the protective cover portion thereof and its relationship with the inner needle retraction actuating portion.

The claims of the '631 patent are directed to a completely different aspect of the apparatus and therefore, are silent as to the needle retraction mechanism. In other words, these patent claims do not disclose or suggest a detailed construction for the housing and since a number of the claimed features are not suggested by the claims of the '631 patent, the double patenting rejection can not be maintained. Withdrawal of this rejection is in order.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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